

OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chief, PIRS

FROM: Associate General Counsel, Litigation Division

SUBJECT: Pacific Bell v. FCC & USA, No. 95-1082. Filing of a new Petition for Review filed in the United States Court of Appeals for the District of Columbia Circuit.

DATE: February 17, 1995

Docket No(s). Gen. Docket No. 90-314

File No (s).

This is to advise you that Pacific Bell, on February 2, 1995, filed Section 402(a) Petitions for Review of: Amendment of the Commission's Rules to Establish New Personal Communications Services, released December 2, 1994.

Petitioners challenges the Commission's order denying petitions for reconsideration and reaffirming its grant of three pioneer's preferences and its denial of all other preference requests in the broadband PCS proceeding.

Due to a change in the Communications Act, it will not be necessary to notify the parties of this filing.

The Court has docketed this case as No. 95-1082 and the attorney assigned to handle the litigation is James M. Carr.



Daniel M. Armstrong

cc: General Counsel
Office of Public Affairs
Shepard's Citations

JC

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

3
To file '95

PACIFIC BELL,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,

Respondents.

Case No. 95-1082

Filed 2/1/95

PETITION FOR REVIEW

Pacific Bell, pursuant to 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342 and 2344, and Rule 15(a) of the Federal Rules of Appellate Procedure, petitions this Court for review of the Memorandum Opinion and Order of the Federal Communications Commission (the "Commission"), FCC No. 94-304, in the matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Docket No. 90-314, PP-4, PP-16 and PP-42, PP-45, PP-51, PP-54, PP-68, PP-73 (released December 2, 1994) (the "Reconsideration Order"), and through it, the Commission's prior orders in the same proceeding, including the Commission's Third Report and Order, FCC No. 93-550, 9 FCC Rcd 1337 (1994) ("Third Report and Order"). A synopsis of the Reconsideration Order was published in the Federal Register on December 23, 1994, at 59 Fed.

Reg. 66,254. A synopsis of the Third Report and Order was published in the Federal Register on February 28, 1994, at 59 Fed. Reg. 9419. Venue is proper under 28 U.S.C. § 2343.

In the Third Report and Order, the Commission granted pioneer's preferences -- awards that entitle the recipient to receive a radio license through separate processes and at a discount -- to American Personal Communications ("APC"), Cox Enterprises, Inc. ("Cox"), and Omnipoint Communications, Inc. ("Omnipoint"). The Commission also established the size of the licenses to be awarded as preferences and denied the preference requests filed by other parties, including Pacific Bell's.

In the Reconsideration Order, the Commission declined to reconsider its denial of preference requests to eight parties. It also dismissed those portions of the petitions for reconsideration that asked the Commission to rescind the awards granted to APC, Cox, and Omnipoint, stating that the recent passage of legislation regarding the General Agreement on Tariffs and Trade (GATT) mooted Commission action in connection with those grants.

Relief from the Commission's order is sought on the grounds that it is arbitrary, capricious and otherwise contrary to law. Pacific Bell contends, among other things, that the Commission failed to distinguish adequately between those parties that received awards and those that did not; that dismissal of the petitions seeking reconsideration of the awards to APC, Cox, and

Omnipoint was based on an unconstitutional provision of the statute; that the proceedings were tainted by ex parte contacts; and that the service areas and spectrum ranges awarded as preferences were excessive in size and scope.¹

Petitioner therefore requests that this Court hold unlawful, vacate, enjoin, and set aside the Commission's order.

¹Pacific does not believe that it is necessary for it to file this petition for review to place these issues before the Court. The Third Report and Order was before this Court in Pacific Bell v. FCC, No. 94-1149. The Commission, however, sought a voluntary remand in that case, which the Court granted. Pacific Bell v. FCC, No. 94-1148 (D.C. Cir. July 26, 1994). The Commission's decision on remand, Memorandum Opinion and Order on Remand, FCC No. 94-209, in the matters of Review of the Pioneer's Preference Rules, ET Docket No. 93-266, and Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Docket No. 90-314, PP-6, PP-52 and PP-58 (released August 9, 1994) (the "Remand Order"), is currently before this Court in American Personal Communications v. FCC, 94-1549 (and consolidated cases). Because Pacific Bell filed a petition for review of the Commission's Remand Order and never sought reconsideration at any point, Pacific believes that American Personal Communications v. FCC, No. 94-1549, places all of these issues properly before the Court. Nonetheless, because a now-vacated Order of this Court casts some doubt on that issue, see Order of Sept. 27, 1994, American Personal Communications v. FCC, No. 94-1549, vacated, Order of Oct. 6, 1994, Pacific files this protective petition for review. Because Pacific now has petitions for review pending from all of the Commission's orders in these proceedings, all of the issues are unquestionably before the Court. See Joint Motion of Pacific Bell and Bell Atlantic Personal Communications, Inc. To Hold in Abeyance and Consolidate at 13, American Personal Communications v. FCC, No. 94-1549 (and consolidated cases) (D.C. Cir. Jan. 4, 1995). After the time for filing petitions for review of the Memorandum Opinion and Order has expired, Pacific will file a motion to consolidate this case with the cases challenging the Remand Order, if appropriate.

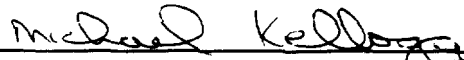
Respectfully submitted,

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